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**IN THE
COURT OF APPEALS OF INDIANA**

TORM L. HOWSE,
Appellant-Respondent,

vs.

KELLY J. BRAMBLE (formerly HENSLEY),
Appellee-Petitioner.

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No. 32A01-0605-CV-199

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable Steven David, Special Judge
Cause No. 32C01-9912-DR-165

October 5, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent Torm L. Howse (“Father”) appeals an order entered at the conclusion of a contempt hearing conducted on March 16, 2006, in the Hendricks Circuit Court, finding Father in contempt of court for failure to appear, and finding his child support arrearage due Appellee-Petitioner Kelly J. Bramble (“Mother”) to be \$78,051.31. We affirm.

Issue

Father articulates several issues, primarily related to prior orders of the trial court, commencing in 1998, which Father did not appeal. Specifically, Father claims that because he and Mother were never married, all prior proceedings are nullified and a child support petition must yet be filed under Indiana’s paternity statutes, presumably seeking child support prospectively.¹ Father also articulates other issues that do not present a timely challenge to a particular judgment or order of the trial court; rather, he essentially seeks an advisory opinion on what procedural due process is due an alleged contemnor.

On cross-appeal, Mother contends that this Court need not address the merits of the issues articulated by Father, because of res judicata or procedural waiver. We address a single, consolidated issue: whether the trial court abused its discretion by finding Father in contempt of court and issuing a body attachment for his failure to appear at a contempt hearing on March 16, 2006.

Facts and Procedural History

Father and Mother never married, but lived together for several years and had three children, J.H., born August 24, 1990, K.H., born October 3, 1991, and S.H., born November

4, 1996. On April 15, 1998, Mother filed a “Verified Complaint for Constructive Trust, for Declaration of Rights from Living Together without Marriage, for Partition of Property, and Petition for Custody and Child Support.” (Appellee’s App. 2.) In her petition, Mother referred the trial court to a dissolution statute, the apparent basis for Father’s contention that all prior proceedings are a nullity.

At a hearing conducted in the Hendricks Superior Court on February 12, 1999, the parties submitted an Agreed Entry wherein Father admitted his paternity of J.H., K.H., and S.H. On February 23, 1999, Mother was awarded the physical custody of the children. Father was ordered to pay child support. Over the next several years, various issues were litigated between the parties. A synopsis of the most recent proceedings follows.

On November 15, 2005, a telephonic conference was conducted between Special Judge Steven David, the parties’ attorneys, and Melissa Shoemaker, Title IV-D Prosecutor (“Shoemaker”). The trial court dictated a CCS entry to provide that Shoemaker intended to file a Motion for Rule to Show Cause against Father, and that the matter would be set for hearing on December 20, 2005 at 8:00 a.m. in the Boone County Circuit Court. Three days later, on November 18, 2005, Mother executed and filed a “Petition for Contempt of Court” alleging that Father was in arrears on court-ordered child support in the amount of \$72,255.31 and had made no payment since February 19, 2002. (Appellant’s App. 46.) The following day, Father filed his pro-se “Motion to Strike Petition for Failure of Required Signatures,” “Motion to Dismiss the Same for Insufficiency of Process,” “Motion to Dismiss the Same for Insufficiency of Service of Process,” “Motion to Dismiss and/or Deny the Same

¹ Father does not specifically challenge the mathematical calculation of his child support arrearage, or claim

as Unenforceable as a Matter of Law,” and “Verified Counter-Complaint for Civil Damages.” (Appellant’s App. 21.)

Father and Shoemaker appeared in the Boone County Circuit Court on December 20, 2005. The CCS indicates, via an entry dated December 20, 2005, Judge David issued an “Order Modifying Visitation Exchange and Notice of Hearing And Order To Appear 16 March 2006, at 8:30 a.m. in Boone County Circuit Court.” (Appellee’s App. 33.) (emphasis added.) The CCS further reflects, via an entry dated December 29, 2005, what occurred on December 20, 2005:

12-20-05 Mr. Howse appears in the Boone Co. Circuit Court, as does Ms. Melissa Shoemaker. A scheduling hearing is held and this matter is reset for hearing on March 16, 2006 at 8:30 a.m., 2 hours set aside in Hendricks Circuit Court. Parties/counsel are directed to file written notice of issues, to include specifics, i.e., Petitioner’s Motion For Modification of Support or Respondent’s Motion For Modification of Custody, or IV-D office Motion for Rule to Show Cause, so that everyone is advised of said issues, and to file said notice by Feb. 6, 2006. Again, the matter will be heard in the Hendricks County Circuit Court. Please distribute this CCS entry to all parties/counsel of record. The Court also enters Order Modifying Visitation Exchange, i.e., transfer of the children from State Bank of Lizton, Lizton, IN, to the State Bank of Lizton in Pittsboro, IN. Court does sign two orders and provides the originals to Ms. Shoemaker to shepherd to Hendricks Circuit Court.

(Appellant’s App. 21-22.) (emphasis added.) The “Notice of Hearing and Order to Appear” signed by Judge David on December 20, 2005, provides that the matter was set for contempt hearing on the “16 day of March 2006, at 8:30 o’clock a.m.” and further, that “[t]he hearing will take place in the Boone County Circuit Court, Boone County Courthouse, Lebanon, Indiana.” (Appellant’s App. at 75.)

that he has made payments not properly credited to him.

On February 14, 2006, Father filed a “Verified Motion for Summary Judgment of Dismissal.” (Appellant’s App. 22.) On February 21, 2006, the trial court directed a CCS entry indicating that the court would consider, on March 16, 2006, Mother’s Motion for Contempt and, time permitting, would also consider Father’s “Emergency Verified Petition for Restraining and Protective Orders Enjoining Plaintiff from Drugging and/or Sedating the Minor Children” filed May 24, 2004 and his “Petition/Demand for Modification of Child Custody” also filed on May 24, 2004. (Appellant’s App. 23.) The trial court also denied or summarily dismissed a number of Father’s pleadings: the “Demand for Jury Trial on All Present and Future Issues” filed May 19, 2004, the “Counter-Complaint for False and Malicious Prosecution” filed May 19, 2004, the “Verified Petition for Damages” filed May 19, 2004, the “Verified Petition for Restraining and Protective Orders Enjoining the Plaintiff’s Boyfriend from Abusing or Harming the Minor Children” filed May 24, 2004, the “Motion for Joinder of Cross-Defendant” filed May 24, 2004, the “Petition for Damages Information on Plaintiff’s Contempt Regarding Children’s Medical, School and Miscellaneous Records” filed May 24, 2004, the “Verified Petition for Termination of Plaintiff’s Parental Rights” filed May 24, 2004, a “Motion for Summary Judgment of Dismissal Due to Lack of Jurisdiction,” and a “Motion for Change of Venue from Judge.” (Appellant’s App. 22-23.)

Father did not initiate an appeal of the February 21, 2006 order. Rather, on March 3, 2006, Father filed his “Emergency Motion For Reconsideration,” “Notice of Various Civil and Constitutional Rights Violations,” and “Motion For T.R. 58 Judgment.” (Appellant’s App. 24.) Thereafter, on March 10, 2006, Father filed his “Notice of Unlawful Deprivation

of Counsel Westerfeld,” “Emergency Motion to Recall Counsel Westerfeld Prior to Hearing filed,” “Reply to State’s Response to Motion to Strike,” “Motion to Strike the Same Response as Violating Rule 11, and All of the State’s Pleadings for Want of Lawful Authority,” and “Notice of Fraud Upon the Court.” (Appellant’s App. 24.)

Father attempted to remove the case to the United States District Court, Southern District of Indiana. On March 15, 2006, the matter was remanded from the United States District Court. On March 16, 2006, Shoemaker, Mother, and Mother’s private attorney appeared in the Hendricks Circuit Court. The trial court found Father in contempt for failure to appear, found that his child support arrearage was \$78,051.31 as of March 10, 2006, and ordered his body attachment. This appeal ensued.

Discussion and Decision

Father contends he cannot be found in contempt of court for failure to appear in the Hendricks Circuit Court on March 16, 2006, because he was commanded, by written order delivered by the Hendricks County Sheriff, to appear in the Boone Circuit Court on March 16, 2006. He asserts that he did, in fact, properly appear in Boone Circuit Court at the designated time and was told the hearing was being held elsewhere.

The determination of whether a party is in contempt of a court order is a matter within the sound discretion of the trial court. Mitchell v. Mitchell, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003). We will reverse the trial court’s determination only if the court has abused its discretion. Id. A court has abused its discretion when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law. Id. “Willful disobedience of any lawfully entered court order of which the offender had notice is indirect

contempt.” Id. (quoting Francies v. Francies, 759 N.E.2d 1106, 1118 (Ind. Ct. App. 2001), trans. denied). The primary objective of a civil contempt proceeding is to coerce action or to compensate the aggrieved party. Id. at 1199.

As Father observes, the facts and circumstances before the trial court indicate that Father was commanded, via written court order, to appear in Boone County on March 16, 2006 and that inconsistent CCS entries were made with respect to that order. Nevertheless, there were other facts and circumstances from which the trial court could conclude that the confusion was timely corrected, and Father’s failure to appear was willful.

At the March 16, 2006 hearing in Hendricks County, the trial court heard testimony from Bailiff Tom Noyes (“Noyes”). Noyes testified that he spoke with Father on March 15, 2006 about the scheduled hearing, and “advised him that it was in the Hendricks County Circuit Court at zero eight thirty on Wednesday, uh correction on Thursday the Sixteenth.” (Tr. 6.) Noyes testified further, “[Father] acknowledged that.” (Tr. 6.) Judge David, having been advised by court personnel that Father had appeared in Boone County at 8:30 a.m., and was directed to Hendricks County, a half-hour drive, waited until 9:40 a.m. for Father to appear. Father failed to appear by 9:40 and the contempt hearing was conducted in his absence. Father does not claim that he attempted to travel to Hendricks County after he learned the hearing was not being conducted in Boone County.

In light of the totality of the facts and circumstances before the trial court, the court did not abuse its discretion by finding that Father willfully failed to appear, and was in contempt of court.

Affirmed.

MAY, J., and BARNES, J., concur.